

**FILED**

**SEP 28 2005**

**BANKRUPTCY COURT  
OAKLAND, CALIFORNIA**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re No. 05-43200-EJ  
Chapter 13  
ISAAC KASHAMA KALONJI,  
Debtor./

MEMORANDUM RE VARIOUS PENDING MOTIONS

Isaac Kashama Kalonji, the above debtor ("Kalonji"), has moved this court for an order imposing sanctions against 2122 Lakeshore Apartments, LP ("Lakeshore") pursuant to 28 U.S.C. § 1927 and the court's inherent powers. Lakeshore has moved the court for: (1) an order imposing sanctions against Kalonji for filing that motion, (2) an order barring Kalonji from seeking further sanctions against Lakeshore absent leave of this court, and (3) an order lifting the automatic stay to permit Lakeshore to take certain actions in the California state courts. Kalonji does not oppose the motion for relief from the automatic stay, and the court will enter its order thereon. The court will: (a) deny Kalonji's motion for sanctions, (b) conditionally deny Lakeshore's motion for sanctions, and (c) decline to hear further any further motions for sanctions

Memorandum

1 against Lakeshore absent prior leave of this court as more  
2 particularly set forth in the order herewith.

3 A. Kalonji's Motion for Sanctions

4 This is Kalonji's second motion for sanctions against Lakeshore  
5 based on what is essentially the same alleged misconduct. Kalonji  
6 based his first motion on Bankruptcy Code § 362(h). The court  
7 denied that motion because, inter alia, Lakeshore had not engaged in  
8 any conduct that violated the automatic stay, and because Kalonji  
9 had not established any damages.

10 Kalonji's new motion is not well grounded. First, it is barred  
11 by res judicata. See, e.g., Scoggin v. Schrunk, 522 F.2d 436, 437  
12 (9th Cir. 1975), cert. denied, 423 U.S. 1066 (1976) (holding that  
13 res judicata bars assertion of every legal theory for recovery that  
14 might have been raised in the earlier proceeding); Constantini v.  
15 Trans World Airlines, 681 F.2d 1199 (9th Cir. 1982. Second, it is  
16 doubtful whether this court may impose sanctions pursuant to 28  
17 U.S.C. § 1927. See In re Sandoval, 186 B.R. 490, 495-96 (9th Cir.  
18 1995) (bankruptcy court not court of U.S. for purposes of 28 U.S.C.  
19 § 1927); see also In re Perroton, 958 F.2d 889, 896 (9th Cir. 1992).

20 Third, if and to the extent Kalonji seeks relief under  
21 Bankruptcy Code § 105(a) and the court's inherent powers, rather  
22 than 28 U.S.C. § 1927, relief is discretionary, In re Pace, 67 F.3d  
23 187, 193 (9th Cir. 1995), and the court declines to order any  
24 relief. Finally, to the extent Kalonji seeks sanctions based on  
25 Lakeshore's conduct in another court, any relief must be granted by  
26 that other court.

Memorandum

1 The court will therefore deny Kalonji's motion.

2 B. Lakeshore's Motion for Sanctions

3 The court has no evidence before it that Lakeshore complied  
4 with the "safe harbor" provision of Fed. R. Bankr. P. 9011(c)(1)(A).  
5 Absent compliance, the court may not impose sanctions thereunder.  
6 Barber v. Miller, 146 F.3d 707, 711 (9th Cir. 1999). The court will  
7 therefore conditionally deny Lakeshore's motion. If Lakeshore  
8 wishes the court to reconsider on the ground that it, in fact,  
9 complied with Fed. R. Bankr. P. 9011(c)(1)(A), Lakeshore may file a  
10 request for reconsideration within 15 days.

11 C. Lakeshore's Motion for Order Barring Additional Motions

12 Kalonji's frivolous litigation activity, as described in  
13 Lakeshore's moving papers and as evidenced by this court's files,  
14 justifies relief to protect Lakeshore. Therefore, this court will  
15 decline to hear any further motions by Kalonji seeking sanctions  
16 against Lakeshore, absent prior leave of this court, as more  
17 particularly provided in the order filed herewith.

18  
19 Dated: September 28, 2005

20  
21  
22 Edward D. Jellen  
United States Bankruptcy Judge  
23  
24  
25  
26

Memorandum

## PROOF OF SERVICE

# Northern District of California

I, the undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Northern District of California at Oakland, hereby certify:

That I, in the performance of my duties as such clerk, served a copy of the foregoing document entitled Memorandum re Various Pending Motions by depositing it in the regular United States mail at Oakland, California, on the date shown below, in a sealed envelope bearing sufficient postage, addressed as listed below.

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Chapter 13 Trustee  
P.O. Box 5004  
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I declare under penalty of perjury that the foregoing is true and correct.

Dated: SEP 28 2005

R. Abreu  
Raenna J. Abreu